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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Legend

Distributing =

Controlled =

FSub 1 =

State X =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Incentive Plan =

Business A =

Business B =

Specified Trademark =

a =

b =

c =

d =

Dear :

This letter ruling responds to your October 9, 2012 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a “penalty of perjury” statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the facts, representations, and other information may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and it has made no determination regarding, whether the Proposed Transaction (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B)

and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a publicly-traded corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing also has subsidiaries incorporated in foreign jurisdictions. Distributing was founded in Year 1, incorporated in Year 2, and reincorporated as a State X corporation in Year 3.

Distributing has a single class of common stock (and no preferred stock) outstanding. Distributing also has various share-based compensatory arrangements outstanding, including stock options and restricted stock units (“RSUs”) issued to Distributing’s directors and certain Distributing employees under Distributing’s Incentive Plan.

Distributing and the members of its separate affiliated group (“SAG”) as defined in section 355(b)(3)(B) (the “Distributing SAG”) are engaged in Business A. In Year 4, Distributing and one of its foreign subsidiaries (FSub 1) expanded their operations into Business B in order to introduce a new product line that utilized the Distributing SAG’s existing technology and processes. Distributing has submitted financial information indicating that its business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing intends to separate its business activities into two publicly-traded companies. In preparation for the Proposed Transaction, Distributing formed Controlled as a wholly-owned State X corporation on Date 1. Controlled has one class of common stock (and no preferred stock) outstanding, and Distributing has been the sole owner of Controlled since Date 1.

Following the Proposed Transaction, Controlled will be a publicly-traded company, and Distributing and Controlled will operate as two independent companies. Immediately after the Proposed Transaction, a majority of directors on the board of Controlled will be persons that are not directors, officers, employees, or principal shareholders of Distributing, and vice-versa; and directors of Controlled will be freely elected by its shareholders (with the directors being elected annually in staggered years) starting within a months after the Proposed Transaction. With the exception of several employees of Distributing or its subsidiaries that will provide services to Controlled for a limited period after the Proposed Transaction, no person will serve as an officer or employee of both Distributing (or any subsidiary thereof) and Controlled (or any subsidiary thereof) after the Proposed Transaction.

In connection with the Proposed Transaction, Distributing and Controlled have entered or will enter into certain agreements and arrangements, including (i) a separation and distribution agreement, (ii) a transition services agreement (to provide for certain transitional services for a limited period after the Proposed Transaction) (the “Transitional Services”), (iii) a tax-sharing agreement, (iv) an intellectual property matters agreement (the “IP Agreement”) (described below), and (v) a sublicense agreement (described below). In addition, Distributing and Controlled have entered or will enter into certain commercial agreements (including a product distribution agreement) and certain long-term leases or sub-leases (with respect to real property), in each case on terms intended to reflect arm’s-length negotiation, including arm’s-length pricing. Finally, as mentioned previously, several employees of Distributing or its subsidiaries will provide services to Controlled for a period of up to a months after the Proposed Transaction. The foregoing agreements or arrangements concerning the relationship between Distributing and Controlled after the Proposed Transaction are collectively referred to herein as the “Continuing Arrangements.”

The IP Agreement will govern the separation of software, patents, “know how,” trade secrets, and other proprietary information, copyrights, and trademarks of Distributing and its subsidiaries (the “IP”). In addition, the IP Agreement will provide for cross-licenses (the “IP Licenses”) whereby (i) Controlled will have a perpetual royalty-free license to use certain Distributing IP (and vice-versa) after the Proposed Transaction, subject to certain restrictions and exceptions, and (ii) Controlled will have an exclusive license to use certain Distributing IP for a limited period of time following the date of the IP Agreement, and vice-versa (such licenses will be royalty-free for a period of b years). The IP Agreement will contain non-solicitation and non-competition provisions as well.

In turn, pursuant to the sublicense agreement, Distributing will grant Controlled a limited perpetual royalty-free sublicense to use the Specified Trademark (the “Trademark License,” and together with the IP Licenses, the “Licenses”).

Proposed Transaction

For what are represented to be valid business purposes, Distributing has proposed the following series of transactions (together constituting the “Proposed Transaction”):

- (1) FSub 1 will sell all of its Business B assets and liabilities to Distributing.
- (2) Distributing will transfer all of the Business B assets to Controlled in exchange for stock therein and the assumption by Controlled of the Business B liabilities (the “Contribution”).
- (3) Soon thereafter, and immediately before Step 4, Distributing will contribute \$c in cash to Controlled.

- (4) Controlled will issue Controlled common stock in an initial public offering (the "IPO"). Less than percent of Controlled common stock (calculated on an after-issued basis) will be issued in the IPO.
- (5) Approximately d months after the IPO, Distributing will distribute all of its Controlled common stock (representing more than percent of Controlled stock) on a pro rata basis to Distributing's shareholders (the "Distribution"). If any shareholder of Distributing would be entitled to a fractional share of Controlled stock, the shareholder will be paid cash in lieu of a fractional share.

In connection with the Distribution, Distributing employees and directors who have received stock options or RSUs in Distributing under the Incentive Plan will receive stock options or RSUs in Controlled. The Controlled stock options and RSUs generally will have the same terms as the Distributing stock options and RSUs. Adjustments will be made to ensure that the total value of each employee's or director's stock options and/or RSUs in Distributing and Controlled after the Proposed Transaction will equal the value of the employee's or director's stock options and/or RSUs in Distributing before the Proposed Transaction.

Representations

- (a) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Distribution, other than trade payables that arise in the ordinary course of business and that will be paid in the ordinary course of business.
- (b) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing (or any entity controlled directly or indirectly by Distributing) after the Distribution will not constitute stock or securities.
- (c) Other than Controlled stock options and/or RSUs received by Distributing employees and directors that have received Distributing stock options and/or RSUs under the Incentive Plan, no part of the consideration to be distributed by Distributing in the Distribution will be received by a Distributing shareholder as a creditor, an employee, or in any capacity other than that of a shareholder of Distributing. In the aggregate, the shares of Controlled stock that are either issued in the IPO or distributed with respect to Distributing restricted stock will not represent more than percent of the Controlled stock outstanding at the time of the Distribution.

- (d) Distributing will treat all members of its SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (e) The five years of financial information submitted by Distributing is representative of its present business operations, and with regard to the Distributing SAG, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The Distributing SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except for transactions that constitute expansions as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii).
- (g) The Distributing SAG neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (h) Following the Distribution, the Distributing SAG will continue the active conduct of Business A and Controlled will continue the active conduct of Business B, independently and with their separate employees, except as provided pursuant to the Continuing Arrangements.
- (i) The Distribution is being carried out for the following corporate business purposes: (i) to enhance the success of Businesses A and B by enabling Distributing and Controlled to resolve management, systemic, or other problems that arise (or are exacerbated) by the Distributing SAG's operation of several lines of business within a single corporation; (ii) recruitment of employees; and (iii) efficiency in capital formation. The Distribution is motivated, in whole or in substantial part, by one or more of these corporate business purposes.
- (j) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (k) The total adjusted basis and the fair market value of the assets to be transferred to Controlled by Distributing in the Contribution each will equal or exceed the sum of the liabilities to be assumed (within the meaning of section 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.
- (l) The liabilities to be assumed (within the meaning of section 357(d)) by Controlled in the Contribution and the liabilities to which the transferred assets are subject

were incurred in the ordinary course of business and are associated with the assets being transferred.

- (m) The aggregate fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (n) The aggregate fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of those assets.
- (o) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (p) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing has in the stock of Controlled will be included in income immediately before the distribution (see Treas. Reg. § 1.1502-19). At the time of the Distribution, Distributing will not have an excess loss account in the stock of Controlled.
- (q) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (r) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (s) Payments made in connection with all continuing transactions between Distributing (or any entity controlled directly or indirectly by Distributing) and

Controlled (or any entity controlled directly or indirectly by Controlled) following the Distribution, including payments made in connection with commercial agreements or in connection with real property leases or sub-leases, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's-length, except for certain payments made for Transitional Services (which may be provided at cost). The provision of Transitional Services will not exceed a months, and any services provided beyond this transitional period will be on arm's-length terms and for fair market value.

- (t) No two parties to the Proposed Transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (u) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a -percent or greater interest (within the meaning of section 355(d)(4)) in either Distributing or Controlled (including any predecessor of or successor to any such corporation).
- (v) No person will hold, immediately after the Distribution, a -percent or greater interest in any disqualified investment corporation (as defined in section 355(g)(2)) if such person did not hold such an interest in such corporation immediately before the Distribution (taking into account sections 355(g)(3) and (g)(4)).
- (w) Distributing and Controlled each will pay their own expenses, if any, incurred in connection with the Proposed Transaction.
- (x) Distributing has not been a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the Distribution, and neither Distributing nor Controlled will be a United States real property holding corporation immediately after the Distribution.
- (y) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled common stock has been arranged solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by shareholders of Distributing will represent less than one percent of the value of the total consideration that will be distributed in the Distribution. It also is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled common stock. Neither Distributing nor Controlled is aware of any overall plan (within the meaning of section 355(e)) to acquire an ownership interest in Controlled through the purchase of bundled Controlled shares sold in connection with the issuance of cash in lieu of fractional shares.

Rulings

Based solely on the information submitted and the representations made, we rule as follows:

- (1) The Contribution, followed by the Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be a “party to a reorganization” within the meaning of section 368(b).
- (2) Distributing will recognize no gain or loss on the Contribution. Sections 357(a) and 361(a).
- (3) Controlled will recognize no gain or loss on the Contribution. Section 1032(a).
- (4) Immediately after the Contribution, Controlled’s basis in each asset received in the Contribution will equal the basis of the asset in Distributing’s hands immediately before the Contribution. Section 362(b).
- (5) Controlled’s holding period for each asset received in the Contribution will include the period during which Distributing held that asset. Section 1223(2).
- (6) Distributing will recognize no gain or loss on the Distribution. Section 361(c)(1).
- (7) Distributing’s shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) upon their receipt of Controlled stock in the Distribution. Section 355(a)(1).
- (8) The basis of the stock of Distributing and Controlled in the hands of each Distributing shareholder immediately after the Distribution will equal the basis of the Distributing stock held by each Distributing shareholder immediately before the Distribution, allocated in proportion to the fair market value of Distributing and Controlled in accordance with section 358(a)(1) and Treas. Reg. § 1.358-2(a). Sections 358(b)(2) and (c).
- (9) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution is made, provided the Distributing stock is held by the Distributing shareholder as a capital asset on the date of the Distribution. Section 1223(1).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and the Treasury regulations or the tax treatment of any condition existing at the time of, or effect resulting from, the Proposed Transaction that is not specifically covered by the above Rulings. In particular, no opinion is expressed or implied regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether the Distribution and any acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii);
- (iv) The federal income and employment tax consequences of the receipt of Controlled stock options and/or RSUs by holders of Distributing stock options and/or RSUs; and
- (v) The potential application of section 482 to any payments made in connection with the Continuing Arrangements that are not made for fair market value based on terms and conditions arrived at by the parties bargaining at arm's-length.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Russell G. Jones
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel (Corporate)